MONTANA LEGISLATIVE HISTORY

Chapter 190 19 75

Bill H _____ S 121 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 3/8	✓ C	Hearing Date(s) 1/24	✓ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
Date Out _____	____ C		

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

Senate BILL NO. 121

INTRODUCED BY Roberts

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF INTOXICATING SUBSTANCE BY DELETING REFERENCES TO NON-ALCOHOLIC SUBSTANCES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"94-2-101. General definitions. Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

INTRODUCED BILL

LC 0594

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the

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incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of

its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the

plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any ~~substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability~~ alcoholic beverage including but not limited to any beverage containing one-half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of

1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep; or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers

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from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"--A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention

for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judical, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or

participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or

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otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, micro-organisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor,

guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"--A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the

vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or

restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

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(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or

substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

-End-

HOUSE OF REPRESENTATIVES

Date: March 8, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 121

Be amended in the third reading bill as follows:

1. Amend title, page 1, line 7.
   Following: "NONALCOHOLIC"
   Strike: "SUBSTANCES"
   Insert: "SUBSTANCE"

2. Amend page 5, section 1, subsection (25), line 17.
   Strike: "SUBSTANCES"
   Insert: "SUBSTANCE"

AS SO AMENDED
BE CONCURRED IN

NO.	AUTHOR	SUBJECT	REFERRED TO
	ET AL		AMENDED ON 2ND READING 2/19/75
119	NORMAN	DELETING SHERIFF'S NOTICE REQUIREMENT WHEN WORKMEN'S COMPENSATION DIVISION CANCELS AN EMPLOYER FOR FAILURE TO PAY PREMIUMS TO THE DIVISION.	SIGNED BY GOVERNOR 4/3/75 CHAPTER 225
120	ROBERTS, CETRONE	DEFINING THE CRIME OF BURGLARY BY ADDING "UNLAWFULLY" TO THE DEFINITION OF AGGRAVATED BURGLARY.	SIGNED BY GOVERNOR 4/7/75 CHAPTER 260
121	ROBERTS	AMENDING THE DEFINITION OF INTOXICATING SUBSTANCE BY CHANGING THE REFERENCES TO NONALCOHOLIC SUBSTANCE.	SIGNED BY GOVERNOR 3/31/75 CHAPTER 190
122	ROBERTS, CETRONE	CLARIFYING PROPERTY WHICH MUST BE DAMAGED TO MAKE THE CRIMINAL ACT ARSON.	SIGNED BY GOVERNOR 4/7/75 CHAPTER 261
123	ROBERTS, CETRONE	PROVIDING DEFINITIONS OF SEXUAL CRIMES.	SIGNED BY GOVERNOR 4/14/75 CHAPTER 405
124	ROBERTS, CETRONE	PROVIDING AWARENESS OF PROBABLE RESULT OF PERSON'S CONDUCT CONSTITUTES KNOWLEDGE.	SIGNED BY GOVERNOR 4/16/75 CHAPTER 443
125	TURNAGE, LYNCH, HAZELBAKER	CLASSIFYING RULES MADE UNDER ADMINISTRATIVE PROCEDURE ACT AS ADJECTIVE OR SUBSTANTIVE RULES.	HOUSE KILLED ON 2ND READING 3/25/75
126	HEALY, LEE, MEHRENS, ET AL	UPDATING THE STATUS OF CONSTABLES BY MAKING THEM COUNTY OFFICERS.	SENATE KILLED IN LOCAL GOVERNMENT 2/11/75
127	BLAYLOCK (BY REQUEST OF DEPT. OF REV.)	RELATING TO OIL PRODUCERS' LICENSE TAX.	SIGNED BY GOVERNOR 4/7/75 CHAPTER 262

NO.	AUTHOR	SUBJECT	REFERRED TO
128	BLAYLOCK, NORMAN, FLYNN	REQUIRING REUSABLE BEVERAGE CONTAINERS FOR BEER AND SOFT DRINKS.	SENATE KILLED IN NATURAL RESOURCES AND FISH AND GAME 2/11/75
129	TOWE, STORY, DUNKLE, ET AL	REVISING PROVISIONS CONCERNING USE OF DISABILITY AND PENSION FUNDS OF FIRE DEPARTMENT RELIEF ASSOCIATION.	SIGNED BY GOVERNOR 3/17/75 CHAPTER 47
130	TURNAGE	ADDING A FILING FEE TO BE PAID TO SECRETARY OF STATE FOR FILING TORT CLAIMS.	SIGNED BY GOVERNOR 4/10/75 CHAPTER 361
131	GREELY, DEVINE, FASBENDER, ET AL	LIMITING, LICENSING, REGULATING AND CONTROLLING GAMBLING GAMES.	SENATE KILLED ON 3RD READING 2/22/75
132	R. SMITH (BY REQUEST OF DEPT. OF HIGHWAYS)	ALLOWING SELF-PROPELLED VEHICLES WITHIN LENGTH LIMITATIONS, INCREASING THE PERMISSIBLE LENGTH TO 40 FEET.	SIGNED BY GOVERNOR 2/26/75 CHAPTER 20
133	ROBERTS	DELETING LANGUAGE THAT PROHIBITS A RETIRED VOLUNTEER FIREMAN FROM RECEIVING BENEFITS FROM RETIREMENT SYSTEM.	SIGNED BY GOVERNOR 3/17/75 CHAPTER 48
134	ROBERTS	PROVIDING FOR A SHOW CAUSE HEARING BEFORE A SHERIFF MAY SEIZE PROPERTY.	SIGNED BY GOVERNOR 4/10/75 CHAPTER 362
135	ROBERTS, TURNAGE	PROVIDING FOR PUBLICATION OF NOTICE OF PROPOSED RULES 30 DAYS PRIOR TO AGENCY'S INTENDED ACTION.	SIGNED BY GOVERNOR 4/21/75 CHAPTER 482
136	THIESSEN, FLYNN	ALLOWING A COUNTY TO RETAIN ALL MONEYS COLLECTED FOR GAMBLING LICENSES.	HOUSE SELECT COMMITTEE ON GAMBLING 2/20/75
137	CETRONE, BROWN, STORY, ET AL	ELECTING FIRST CLASS ELEMENTARY SCHOOL DISTRICT TRUSTEES BY SINGLE-MEMBER DISTRICTS.	SENATE EDUCATION 1/21/75

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Box/Fd No.
Coll. No.

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
121	1/18/75	1/24/75	2/10/75			2/10/75			
122	1/18/75	1/24/75	1/24/75	1/24/75					
123	1/18/75	1/24/75	1/24/75	1/24/75					
124	1/18/75	1/24/75	1/24/75	1/24/75					
125	1/18/75	1/28/75	2/25/75		as amend 2/24/75				
130	1/20/75	1/28/75	2/5/75	2/5/75					
134	1/20/75	1/27/75	2/5/75			2/5/75			
138	1/21/75	1/29/75	2/5/75			2/5/75			
143	1/21/75	1/30/75	2/5/75			2/5/75			
148	1/21/75	1/29/75	2/21/75			2/21/75			
153	2/1/75	2/18/75	2/24/75			2/24/75			
154	1/21/75	2/24/75	2/24/75	2/24/75					
161	1/21/75	1/30/75	2/1/75			1/30/75			
162	1/28/75	2/7/75	2/10/75			2/10/75			
172	1/22/75	2/4/75	2/21/75		2/21/75				
175	1/22/75	2/3/75	2/25/75			2/24/75			
176	1/24/75	2/3/75	2/10/75		2/10/75				

Separate sheet for Senate House Bills and Resolutions

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MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 24, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:36 a.m. in Room 442 of the Capitol Building.

The following bills were heard: SB 80
SB 120
SB 121
SB 122
SB 123
SB 124

SB 80 Senator Flynn, from District 48 and sponsor of the bill, introduced Robert Deschamps, Missoula County Attorney, who drafted the bill.

Mr. Deschamps stated this bill is patterned after statutes in thirteen states with primary work being done in liaison with the King County, Seattle, Washington, County Attorney's office. He said the bill provides for an investigative subpoena and also selective immunity based on testimony given. He gave two examples of cases where this bill would have aided greatly in investigation and prosecution of white collar crime.

SB 120 Senator Roberts, from District 11 and sponsor of the bill,
121 stated this package of bills was drawn up to correct some
122 oversights in the 1973 Criminal Code which could have
123 some negative results in interpretation and/or appeals.
124

Professor Larry M. Elison, University of Montana Law School presented testimony on the bills. His written statement is attached.

The hearing was closed and the Committee went into Executive Session.

SB 120 SENATOR TURNAGE MOVED SB 120 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 121 SENATOR TURNAGE MOVED CONSIDERATION OF SB 121 BE PASSED FOR THE DAY FOR THE PURPOSE OF FURTHER DISCUSSION. THE MOTION CARRIED.

SB 122 SENATOR TURNAGE MOVED SB 122 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

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Coll. No._____ Bx/Fd No._____

SB 123 SENATOR TURNAGE MOVED SB 123 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 124 SENATOR TURNAGE MOVED SB 124 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

There being no further business, the meeting adjourned to reconvene Saturday, January 25, 1975, at 9:30 a.m.

Thomas E. Towe
CHAIRMAN

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ROLL CALL

Judiciary COMMITTEE
44th
~~SECOND HALF~~ - ~~43rd~~ LEGISLATIVE SESSION 1975 Date 1/24/75

NAME	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

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Coll. No._____ Bx/Fd No._____

SB BILL NO. 87

INTRODUCED BY _____

94-2-101 (25)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-2-101 (25), R.C.M. 1947, WHICH DEFINES THE TERM 'INTOXICATING SUBSTANCE' BY DELETING THE WORDS 'SUBSTANCE HAVING AN HALLUCINOGENIC, DEPRESSANT, STIMULATING, OR NARCOTIC EFFECT, TAKEN IN SUCH QUANTITIES AS TO IMPAIR MENTAL OR PHYSICAL CAPABILITY' AND SUBSTITUTING THEREFOR THE WORDS 'ALCOHOLIC BEVERAGE.'"

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 94-2-101 (25), R.C.M. 1947, is amended to read:

(25) "Intoxicating substance" means any ~~substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability~~ alcoholic beverage including but not limited to any beverage containing one-half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume.

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Coll. No._____ Bx/Fd No._____

EXPLANATION

The present definition of intoxicating substance [94-2-101 (25)] was not an original Criminal Commission draft but was written by the 1973 legislature.

In its present form, intoxicating substance is defined by its effect on the user, not by its chemical composition. If alcohol is given to or possessed by a minor, there is no criminal offense until the minor drinks the alcohol and becomes drunk. Further, the present definition includes "hallucinogenic," "depressant," "stimulating," and "narcotic" substances, all of which are defined and prohibited in Title 54, the Dangerous Drug Act. To attempt to define these terms again is at the least redundant if not contradictory and without any purpose.

As redrafted the provision would relate only to alcoholic beverages possessed by minors and alcoholic beverages given or sold to minors.

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 143	An act to amend section 11-1104, R.C.M. 1947 to provide for prompt judicial review of resolutions proposed by popular initiative.	2/13/75	Colberg	3/5/75	3/11 - Rules Committee BE CONCURRED IN AS AMENDED BE NOT CONCURRED IN	3/21/75 3/10/75
SB 134	An act to amend section 93-4102 to provide for a show cause hearing before a sheriff may seize proerty.	2/14/75	Roberts	3/19/75	BE CONCURRED IN	3/21/75
SB 5	An act to revise the marriage and dissolution of marriage laws.	2/15/75	Regan	3/10/75	AS SO AMENDED BE CONCURRED IN	3/19/75
SB 93	An act to revise tax appeals procedures by providing for reception of additional evidence onjudicial review, the assessment of costs on certain appals, etc.	2/17/75	Turnage	3/18/75	AS SO AMENDED BE CONCURRED IN	3/21/75
HB 174	To provide a state income tax credit to doctors & dentists who practice in Mt. cities or towns with less than 10,000 population.	2/18/75	Lockrem	Hearing held previously	AS AMENDED DO NOT PASS	2/19/75
SB 121	To amend section 94-2-101 of the Criminal code, in the definition of intoxicating substance by deleting refer. to non-alcoholic substances.	2/18/75	Roberts	3/8/75		

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JUDICIARY COMMITTEE

March 8, 1975

The forty eighth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Saturday, March 8, 1975 at 9:00 AM. Representative Herb Huennekens, chairman, excused. Representative James Moore, Vice-chairman, presided. All members were present except Representatives Kimble, Scully, Seifert and Vincent, absent, excused.

Bills scheduled for hearing this date were Senate Bill No. 218, Senate Joint Resolution No. 3, and Senate Bills Nos. 77, 121 and 402 and were heard in this order.

SENATE BILL NO. 218 Senator Joe Roberts, District #11, is chief sponsor of this act to amend the constitution to reduce the size of legislature to twenty five members in the Senate and fifty members in the House. He stated he feels this is a propitious time to consider this issue. In one form or another the voters will be dealing with the question of annual sessions. They should be given the further alternative of reducing the size of legislature. It would allow more efficiency without jeopardizing anything.

Proponent Senator Goodover stated that a recent study showed the legislators are underpaid, overworked and ill informed. He feels that reducing the size and increasing the time in legislature is one step in making legislature a more effective body. Areas wouldn't have to be redistricted to make this possible. Feels we should give people the opportunity to see how many legislators they favor in Helena.

No other proponents. No opponents. No closing. Representative Hager questioned when the people would vote on this was told in the '76 election and it would apply in '78. Representative Lester questioned if this were accepted would you have to revise campaign fund limits and was answered that you might have to.

Hearing was then closed.

Chairman Huennekens present and presiding now.

SENATE JOINT RESOLUTION No. 3 Senator Mike Greely, District #20, stated he'd like to take Senate Bill No. 77 in conjunction with this resolution. He stated that SJR #3 repeals a law. The bills are a product of an ad hoc committee the governor appointed since the last legislative session. There is a similar bill by Representative Richards in the House. He doesn't care which one passes. Senator Greely's bill talks in terms of misdemeanor penalty - he favors it because if penalty too severe sometimes you can't get a conviction. He stated we can't cut any sector off completely from our political process, they have the right to vote, feels they should be allowed to participate.

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The argument against public employees in politics is that some fear that your boss will somehow be coercing you to donate to his campaign. He feels we have an adequate vehicle for someone to go and complain to and hopes this committee will give positive consideration.

Proponent Tom Schneider representing the Montana Public Employees Association, stated they support both of these bills. He stated the present law doesn't do any good, it has no penalty, no teeth. Public employees still contribute and have to do it illegally now. To go to court a public employee has to first admit he broke the law.

Proponent Mike Pichette, representing the Democratic party, urged support of this bill. Proponent Stan Gerke, representing the AFL-CIO stated they are in favor of these bills. He added the comment that the Federal Hatch Act has been amended effective 1/1/75. Proponent Ernie Post, representing the AFL-CIO, suggested adding the words "during working hours" on page 7, line 11, then in lines 14 and 15 strike "while on the job during work hours". He feels this would clear the language. The intent here is they can't solicit money off the job either.

Proponent Al Sampson, representing the Montana Firemen's Association, urged support of both the bill and the resolution. Proponent Evan Barrett, representing the ad hoc committee that prepared this bill, stated this committee was concerned with two things, to insure the right to participate and not make public employees second class citizens and secondly, to insure no coercion. He stated he also wished to clarify that the Federal Hatch Act was amended to lift restriction on state and federal employees if in job with federal funding. The amendment received overwhelming support of the ad hoc committee. Urged concurrence.

No further proponents. No opponents. No closing. Representative Moore questioned if in putting in provision under "unlawful act of Employers" it wasn't consistent, should broaden title. Senator Greely agreed.

Representative Meloy questioned whether Senator Greely had any objection to taking out subsection (3) on page 7 and wondered why this was in the bill to which Senator Greely replied he had no objection, the section was to take sting away from the bill. He wanted to make it clear that this was prohibition.

Hearing was then closed on SJR 3 and SB 77.

SENATE BILL NO. 121 Senator Joe Roberts, District #11, chief sponsor stated this is one of a package of bills with technical amendment to the criminal code and deals with the definition of intoxicating substances. On page 5 of the bill it refers to the effect a drug has on a person, not the substance. The net result is that you would have to prove a youngster became intoxicated. The intent of the section was to define by content of substance.

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Senator Roberts feels this bill takes care of the problem of defining intoxicating substance and does not legalize marijuana.

No proponents. No opponents. No closing. Following very brief questioning the hearing was closed.

SENATE BILL NO. 402 Senator Joe Roberts, District #11, is chief sponsor of this act entitled "The Judicial Office Campaign Finance Act" to provide a method of public financing of judicial campaigns by increasing the attorneys' licensing fees. He stated this was a novel approach to a real problem and this is the same concept as public financing.

The bill arose from a problem that in getting money to run a judicial campaign the only segment of the public interested in the outcome of a judicial campaign enough to contribute are attorneys. He is not saying he knows of any gross abuses but there is a pernicious aspect, potential ethical bind when lawyers that will appear in court have given a contribution. Presently the license fee of attorneys in Montana is $10.00 and this is quite low, particularly by the standards of surrounding western states. By raising their licensing fees and earmarking portions for judicial campaigns judicial campaigns will be funded. The bill also earmarks amount given to each different office and campaign.

Senator Roberts stated that in twenty eight district judge contests, only twenty-two were uncontested last time and he hopes that under public financing it would encourage more contestants. The bill also limits contributions and expenditures. Asked for favorable consideration.

Proponent Mike Pichette, representing the Democratic party, stated he supports this most outstanding idea to come before the legislature. Public financing for judges is in the party platform.

Proponent Ernie Post, representing the AFL-CIO, stated they feel public financing of campaigns is the only true way to take out corruption. A judge has only one person to go to for contributions - a lawyer.

No further proponents. No opponents.

Representative Baeth stated he thinks this is one bill laymen could support. Representative Rasmussen stated he thinks this is a great idea. Representative Yardley questioned if the limits of campaign spending might be too restrictive.

Chairman Huennekens had to be excused and Representative James Moore, Vice-chairman, now chairing.

Committee members discussed what would become of any leftover monies and the amount of money that would be provided by increasing the licensing fees of attorneys. Representative Moore stated that as a practical matter it is the attorneys who are contributing now.

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The hearing was then closed on SB 402.

EXECUTIVE SESSION

SENATE BILL NO. 121 Representative Baeth moved BE CONCURRED IN. Representative Moore stated this bill should refer to "control substance", use the singular. Representative Meloy moved to amend "substances" to read singular. Motion carried.

Motion AS SO AMENDED BE CONCURRED IN carried unanimously.

SENATE BILL NO. 402 Staff attorney Diana Dowling stated there is a problem with immediate effective date. The bills already have been sent out for this year for attorneys' licenses.

Representative Lory moved to amend by striking section 6. Representative Meloy made a substitute motion to amend page 4, after line 24 by adding a new subsection (5) to read: "any unexpended funds remaining after all campaign debts have been satisfied should be paid back into an earmarked revenue fund." Then delete section 6 in its entirety. Also amend title by striking: "and providing an effective date". Motion to amend carried.

Representative Meloy moved AS SO AMENDED BE CONCURRED IN. Motion carried unanimously.

SENATE BILL NO. 218 Chairman Huennekens stated this is an amendment to the constitution. This is pro forma.

Representative Lory moved BE CONCURRED IN. Representative Meloy made a substitute motion of BE NOT CONCURRED IN. Representative Hager questioned sending this to the floor without recommendation to which Representative Meloy stated he would object. Representative Moore suggested the committee could amend, strike out twenty five senators and it would make a unicameral legislature. Representative Meloy stated that the rules committee has determined that if a constitutional amendment comes out do not pass either the sponsor or the chairman files a complaint. Representative Anderson stated he feels this is something that should be debated on the floor.

The motion BE NOT CONCURRED IN failed. Representative Meloy stated the issue is reducing the number of senators and representatives which dilutes the communication with their constituents. Representative Vincent stated his vote was to get this on the floor. Will vote against this on the floor. Representative Rasmussen stated that fewer representatives would provide more staff and office space.

Following additional discussion Representative Yardley made a substitute motion to pass without recommendation. Representatives Yardley, Hager, Lory and Day voted yes, Representatives

SENATE BILL NO. 121

INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF INTOXICATING SUBSTANCE BY ~~DELETING~~ CHANGING THE REFERENCES TO NONALCOHOLIC ~~SUBSTANCES~~ SUBSTANCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"94-2-101. General definitions. Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

REFERENCE BILL

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the

incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of

its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the

plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any CONTROLLED ~~SUBSTANCES~~ SUBSTANCE AS DEFINED IN CHAPTER 3 OF TITLE 54, R.C.M. 1947, AND ~~substance--having--an--hallucinogenic, depressant,-stimulating,-or-narcotic-effect,-taken--in--such quantities--as--to--impair--mental--or--physical--capability~~ alcoholic beverage including but not limited to any beverage containing one-half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port

or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep; or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"--A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense,

detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judical, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the

United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights

concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, micro-organisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a

juror, advisor, consultant, administrator, executor, guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"--A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by

any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the

property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

-End-